

APPEAL NO. 040235
FILED MARCH 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 6, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appealed, arguing that the determination of nonentitlement is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the claimant had at least a 15% impairment rating and did not elect to commute any part of his impairment income benefits. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(5) and (e).

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the fourth quarter. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(e). Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3) and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. There is sufficient evidence to support the finding that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods at issue. The hearing officer noted that the amount of time spent by the claimant in looking for work was extremely minimal and that the claimant's limited job search was not reasonably calculated to result in success, even though the claimant was hired four months later by one of the contacts made during the qualifying period for the fourth quarter. Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we affirm the determination that the claimant is not entitled to SIBs for the fourth quarter.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge